



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

JUN 13 2007

Melanie Sloan, Executive Director
Citizens for Responsibility and Ethics in Washington
1400 Eye Street, N.W., #450
Washington, D.C. 20005

RE: MUR 5830

Dear Ms. Sloan:

On May 23, 2007, the Federal Election Commission reviewed the allegations in your complaint dated September 28, 2006, and found that on the basis of the information provided in your complaint, and information provided by the respondents, there is no reason to believe the U.S.-Cuba Democracy PAC and Gus Machado, in his official capacity as treasurer, violated 2 U.S.C. §§ 441b(b)(4)(A)(i), 433(b), 441e(a), or 441f, or that Mr. Machado violated the Act. The Commission also found no reason to believe Cuba Democracy Advocates, Inc. violated 2 U.S.C. § 441e(a), or that Leopoldo Fernandez-Pujals or Mauricio Claver-Carone violated 2 U.S.C. §§ 441e(a) or 441f. Accordingly, on May 23, 2007, the Commission closed the file in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). The Factual and Legal Analyses, which more fully explain the Commission's findings, are enclosed.

The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8).

Sincerely,
Thomasenia P. Duncan
General Counsel

BY: Ann Marie Terzaken
Acting Associate General Counsel
for Enforcement

Enclosures
Factual and Legal Analyses

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: U.S.-Cuba Democracy PAC and Gus Machado, in
his official capacity as Treasurer

MUR: 5830

Gus Machado

I. INTRODUCTION

This matter was generated by a complaint filed with the Federal Election Commission by the Citizens for Responsibility and Ethics in Washington alleging a violation of the Federal Election Campaign Act of 1971 ("the Act"), as amended by the Bipartisan Campaign Reform Act of 2002 ("BCRA"), by the U.S.-Cuba Democracy PAC and Gus Machado, in his official capacity as Treasurer ("the PAC"), and Gus Machado.

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Summary

The complaint alleges that Gus Machado, Treasurer of the U.S.-Cuba Democracy PAC, knowingly made a false statement to the Commission when he filed a Statement of Organization claiming that the PAC had no connected organization when, according to the complaint, the PAC is actually the separate segregated fund ("SSF") of Cuba Democracy Advocates, Inc., a 501(c)(3) organization ("CDA" or "the corporation"). The complaint further alleges that because the PAC is a SSF, the vast majority of the \$1,500,000 it raised from sources outside of its restricted class was raised in violation of 2 U.S.C. § 441b(b)(4)(A)(i). In addition, the complaint alleges that the PAC received indirect contributions from Leopoldo Fernandez-Pujals, a foreign national and the founder of CDA, in violation of 2 U.S.C. § 441e(a), through: (1) Mauricio Claver-Carone, the Executive Director of CDA, who is paid with funds largely provided to the corporation by

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Fernandez-Pujals, and who used the salary payments to make a contribution of \$3,759.24 to the PAC; and (2) through Mr. Fernandez-Pujal's participation, directly or indirectly, in the decision-making process of the PAC.

In response to the complaint, the PAC asserts that it is properly registered as a nonconnected political committee, and that it has maintained its nonconnected status by ensuring its organizational and financial independence, citing Advisory Opinion 1997-15. Further, the PAC asserts that it has never received any sort of contribution from Mr. Fernandez-Pujals or any other foreign national, and that no foreign national has ever participated in, or directly or indirectly influenced, any decision-making process of the PAC.

In a separate response to the complaint, CDA, Mr. Fernandez-Pujals, and Mr. Claver-Carone assert that CDA has never been involved in any political activity. Specifically, they assert that CDA compensates Mr. Claver-Carone in his capacity as the corporation's Executive Director solely for services rendered in furtherance of CDA's exempt purpose, and all political contribution and volunteer activities ever made by Mr. Claver-Carone were solely pursuant to his personal volition.¹ In addition, the Respondents assert that Mr. Fernandez-Pujals has never sought to direct or exert influence over any member of CDA's Board of Directors regarding election-related activities.

¹ Respondents state that the exempt purpose of CDA "is to promote respect for human rights, representative democracy, and individual freedoms in Cuba," and assert that the organization pursues its exempt purpose "by means of the compilation, publication and dissemination of human rights violations by the Cuban government; advocacy campaigns in favor of the release of political prisoners in Cuba; educational forums and discussion panels on examples of transitions to democracy in Spain, Central and Eastern Europe, and Latin America; the design and promotion of humanitarian and infrastructure assistance programs for the Cuban civil society; and research focused on the economic, social, and cultural complexities of Cuba and the Cuban people."

B. Legal Analysis

1. Allegation that the PAC is not a nonconnected political committee, but is actually the SSF of the CDA corporation

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A corporation that directly or indirectly establishes, administers, or financially supports a political committee is the connected organization of that committee. 2 U.S.C. § 431(7); 11 C.F.R. § 100.6(a). The connected organization and its SSF are subject to restrictions as to the category of persons who may be solicited for contributions to the committee. 2 U.S.C. §§ 441b(b)(4)(A) and (C); 11 C.F.R. §§ 114.5(g)(1) and 114.7(a). By contrast, a political committee without a connected organization may solicit any individual or person for otherwise lawful contributions. All payments to the committee, or on its behalf, for administrative fundraising or other expenses, are direct or in-kind contributions subject to the limits of the Act, unless another exception applies.

The complaint alleges that CDA is the connected organization of the PAC because: (1) according to the complaint, the same individuals, Gus Machado and Mauricio Claver-Carone, serve simultaneously as the Treasurer and Executive Director, respectively, of both CDA and the PAC and thus have operational control of the PAC; (2) Mr. Claver-Carone used \$3,759.24 in funds he received from CDA to pay administrative expenses of the PAC; and (3) two principal agents of CDA – Mr. Machado and Mr. Claver-Carone – were responsible for establishing the PAC.

However, the Commission has permitted the formation of a nonconnected political committee that is organized by individuals associated with another entity under certain circumstances. In permitting the formation of such committees, the Commission has sought to ensure that certain conditions are met with respect to the financial and organizational relationship between the committee and the corporation: (1) even with some overlap with a corporation as to

personnel or facilities, the committee is not financially supported by that corporation; and (2) the committee maintains organizational independence from any other incorporated entity.

For example, in Advisory Opinion 1997-26, the requester asked whether a political committee organized by a group of individuals, including the Executive Director and others associated with a non-profit trade association, would be considered a nonconnected committee under the Act. The Commission concluded that persons associated with the association could establish a nonconnected committee provided that the PAC would not receive financial support from the association or engage in any joint fundraising, or otherwise receive fundraising support from the association, and a majority of the PAC's board of directors was not comprised of directors, officers, or other personnel of the association.

Similarly, in Advisory Opinion 1997-15, the requester asked whether an individual who was the president and CEO of an incorporated membership organization could establish an independent, nonconnected PAC, or whether such a committee would be an SSF of the corporation. The Commission concluded that the individual could establish a nonconnected committee provided that the corporation did not financially support the PAC, and persons outside of the corporation were involved in the conduct and control of the PAC.

In this case, there is currently no information that indicates that CDA has provided any funds at any time to the PAC. The complaint alleges that Mr. Claver-Carone used \$3,759.24 of the salary payments he received from CDA to pay administrative expenses of the PAC, and argues that this constitutes an indirect payment to the PAC from the corporation. However, there is no information that indicates that Mr. Claver-Carone's compensation by CDA was paid for anything other than his bona fide employment as Executive Director of the corporation. In

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addition, \$3,759.24 is a very small fraction of the approximately \$1.25 million the PAC has reportedly raised since its inception in 2003.

As for organizational independence, Respondents assert that operational control of the PAC has always been exercised by an Executive Committee and Board of Directors, the majority of whose members have had no involvement with CDA at all. According to the PAC's response, its operations are under the control of a 25-member Board; only one person associated with CDA, Claver-Carone, who is Executive Director of CDA, is on the Board of the PAC. Within the Board, day-to-day management of the PAC is exercised by a 7-person Executive Committee; only one person associated with CDA, Gus Machado, is on the Executive Committee and is treasurer of the PAC but is no longer an officer or director of CDA.² Thus, it appears that the organizational structure of CDA is consistent with nonconnected committee status in that a majority of the PAC's governing body does not appear to have been comprised of directors, officers or other personnel of the corporation.

In conclusion, there is no information indicating that the PAC is financially supported by CDA. Nor is there information that refutes Respondents' assertion that, from the PAC's inception, the overwhelming majority of those involved in the conduct and control of the PAC have had no involvement whatsoever with CDA. Thus, the PAC appears to be a nonconnected political committee. Accordingly, there is no reason to believe that the U.S.-Cuba Democracy PAC and Gus Machado, in his official capacity as Treasurer, violated 2 U.S.C. § 441b(b)(4)(A)(i) by soliciting funds from the general public.

Although the complaint alleges that Mr. Machado knowingly made a false statement to the Commission in violation of 18 U.S.C. § 1001 when he stated that the PAC had no connected

² The PAC's by-laws indicate that all powers of the PAC must be exercised by, or under the direction of, the Executive Committee, which may act only by a majority vote of its members, except in the case of a tie, in which case the Treasurer's vote will break the tie. See Response, Attachment C at 1.

organization, this criminal provision is not within the Commission's jurisdiction, but 2 U.S.C. § 433(b), which requires political committees to list any connected organization in its Statement of Organization, would apply. Based on our conclusion that the PAC was properly registered as a nonconnected political committee, however, there is no reason to believe that the U.S.-Cuba Democracy PAC and Gus Machado, in his official capacity as Treasurer, violated 2 U.S.C. § 433(b), or that Gus Machado violated the Act.

2. **Allegation that the PAC received indirect contributions from Leopoldo Fernandez-Pujals, a foreign national, in violation of the Act**

The Act prohibits foreign nationals from making direct or indirect contributions or donations of money or other things of value, or express or implied promises to make contributions or donations, in connection with an election to any political office. *See* 2 U.S.C. § 441e(a)(1); 11 C.F.R. § 110.20(b). The term "foreign national" includes, *inter alia*, individuals who are not citizens of the United States and who are not lawfully admitted for permanent residence as defined by 8 U.S.C. § 1101(a)(20). *See* 2 U.S.C. § 441e(b)(2); 11 C.F.R. § 110.20(a)(3)(ii). Likewise, no person may solicit, accept or receive a contribution or donation, as described in § 441e(a)(1)(A) and (B), from a foreign national. *See* 2 U.S.C. § 441e(a)(2); 11 C.F.R. § 110.20(g). A person knowingly accepts a prohibited contribution if that person has actual knowledge that funds originated from a foreign national, is aware of facts that would lead a reasonable person to conclude that there is a substantial probability that the source of the funds solicited is a foreign national, or is aware of facts that would lead a reasonable person to inquire whether the source of funds is from a foreign national but failed to conduct a reasonable inquiry. *See* 11 C.F.R. § 110.20(a)(4).

Contrary to the complaint's allegations, the available information does not indicate that Mr. Fernandez-Pujals made indirect contributions to the PAC through Mr. Claver-Carone, or by

participating in the decision making process of the PAC. As discussed above, there is no information that indicates that Mr. Claver-Carone's compensation by CDA was paid for anything other than his bona fide employment as Executive Director of the corporation. The complaint's assertion that Mr. Fernandez-Pujals participated in the decision-making process of the PAC appears to be purely speculative. In contrast, the record contains an affidavit sworn to by Mr. Claver-Carone, in which he avers that any contributions that he has made to the PAC have been solely pursuant to his personal will and volition, and that he has never made, or been asked to make, contributions, directly or indirectly, on behalf of Mr. Fernandez-Pujals or CDA. Because there is no information to support the complaint's allegation, there is no reason to believe that the U.S.-Cuba Democracy PAC and Gus Machado, in his official capacity as Treasurer, violated 2 U.S.C. §§ 441e(a) and 441f by receiving prohibited foreign national contributions that were made in the name of another.

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Leopoldo Fernandez-Pujals
Cuba Democracy Advocates, Inc.
Mauricio Claver-Carone

MUR: 5830

I. INTRODUCTION

This matter was generated by a complaint filed with the Federal Election Commission by the Citizens for Responsibility and Ethics in Washington alleging a violation of the Federal Election Campaign Act of 1971 ("the Act"), as amended by the Bipartisan Campaign Reform Act of 2002 ("BCRA"), by Leopoldo Fernandez-Pujals, Cuba Democracy Advocates, Inc. ("CDA" or "the corporation"), and Mauricio Claver-Carone.

II. FACTUAL AND LEGAL ANALYSIS

The complaint alleges that Leopoldo Fernandez-Pujals, a foreign national and the founder of CDA, violated 2 U.S.C. § 441e(a) by: (1) making indirect contributions to the PAC through Mauricio Claver-Carone, the Executive Director of CDA, who is paid with funds largely provided to the corporation by Fernandez-Pujals, and who used the salary payments to make a contribution of \$3,759.24 to the PAC; and (2) by participating, directly or indirectly, in the decision-making process of the PAC.

In response to the complaint, the PAC asserts that it has never received any sort of contribution from Mr. Fernandez-Pujals or any other foreign national, and that no foreign national has ever participated in, or directly or indirectly influenced, any decision-making process of the PAC. In a separate response to the complaint, CDA, Mr. Fernandez-Pujals, and Mr. Claver-Carone assert that CDA has never been involved in any political activity. Specifically, they assert that CDA compensates Mr. Claver-Carone in his capacity as the

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corporation's Executive Director solely for services rendered in furtherance of CDA's exempt purpose, and all political contribution and volunteer activities ever made by Mr. Claver-Carone were solely pursuant to his personal volition.¹ In addition, the Respondents assert that Mr. Fernandez-Pujals has never sought to direct or exert influence over any member of CDA's Board of Directors regarding election-related activities.

The Act prohibits foreign nationals from making direct or indirect contributions or donations of money or other things of value, or express or implied promises to make contributions or donations, in connection with an election to any political office. *See* 2 U.S.C. § 441e(a)(1); 11 C.F.R. § 110.20(b). The term "foreign national" includes, *inter alia*, individuals who are not citizens of the United States and who are not lawfully admitted for permanent residence as defined by 8 U.S.C. § 1101(a)(20). *See* 2 U.S.C. § 441e(b)(2); 11 C.F.R. § 110.20(a)(3)(ii). Likewise, no person may solicit, accept or receive a contribution or donation, as described in § 441e(a)(1)(A) and (B), from a foreign national. *See* 2 U.S.C. § 441e(a)(2); 11 C.F.R. § 110.20(g). A person knowingly accepts a prohibited contribution if that person has actual knowledge that funds originated from a foreign national, is aware of facts that would lead a reasonable person to conclude that there is a substantial probability that the source of the funds solicited is a foreign national, or is aware of facts that would lead a reasonable person to inquire whether the source of funds is from a foreign national but failed to conduct a reasonable inquiry. *See* 11 C.F.R. § 110.20(a)(4).

¹ Respondents state that the exempt purpose of CDA "is to promote respect for human rights, representative democracy, and individual freedoms in Cuba," and assert that the organization pursues its exempt purpose "by means of the compilation, publication and dissemination of human rights violations by the Cuban government; advocacy campaigns in favor of the release of political prisoners in Cuba; educational forums and discussion panels on examples of transitions to democracy in Spain, Central and Eastern Europe, and Latin America; the design and promotion of humanitarian and infrastructure assistance programs for the Cuban civil society; and research focused on the economic, social, and cultural complexities of Cuba and the Cuban people."

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Contrary to the complaint's allegations, the available information does not indicate that Mr. Fernandez-Pujals made indirect contributions to the PAC through Mr. Claver-Carone, or by participating in the decision making process of the PAC. There is no information that indicates that Mr. Claver-Carone's compensation by CDA was paid for anything other than his bona fide employment as Executive Director of the corporation. The complaint's assertion that Mr. Fernandez-Pujals participated in the decision-making process of the PAC appears to be purely speculative. In contrast, the Respondents have submitted an affidavit sworn to by Mr. Claver-Carone, in which he avers that any contributions that he has made to the PAC have been solely pursuant to his personal will and volition, and that he has never made, or been asked to make, contributions, directly or indirectly, on behalf of Mr. Fernandez-Pujals or CDA. Because there is no information to support the complaint's allegation, there is no reason to believe that:

(1) Leopoldo Fernandez-Pujals violated 2 U.S.C. §§ 441e(a) or 441f by making foreign national contributions and doing so in the name of another; (2) Cuba Democracy Advocates, Inc. violated 2 U.S.C. § 441e(a) by receiving foreign national contributions as a conduit for indirect contributions to the PAC; or (3) Mauricio Claver-Carone violated 2 U.S.C. §§ 441e(a) and 441f by receiving foreign national contributions as a conduit for indirect contributions to the PAC, and allowing his name to be used to effect the making of a contribution in the name of another.